MOTION FOR REHEARING BEFORE AN IMPARTIAL JURY OF CITIZENS OR IN THE ALTERNATIVE, AN INDEPENDENT REVIEW OF THE RECORD BY AN IMPARTIAL PANEL OF CITIZENS

COMES NOW Judge Matthew E. McMillan, who moves this Honorable Court to reconsider the opinion and decision rendered by this Court in the above-styled cause on August 16, 2001, or in the alternative, permit Judge McMillan a trial by an impartial jury of citizens, chosen at random from the jury pool of Manatee County, or to allow an independent review of the record by an impartial panel of citizens who are not political appointees and have no connections with the judiciary or the Florida Bar. Judge McMillan will abide by the Findings and Recommendations of such an impartial jury or panel without further appeal. As grounds for said motion, the Respondent states as follows:

I. The Judicial Qualifications Commission is Neither Independent nor Impartial

It is imperative that the citizens of this state, and our great nation, have confidence in the impartiality and integrity of the judicial branch of our government. We have long recognized that imperative, and have created codes of conduct for judges as well as commissions to oversee their conduct. However, public confidence in the judiciary is not enhanced by a judicial conduct oversight commission composed predominantly of judges and lawyers. The public is distrustful when an organization

creates a policing body composed of members who are part of, or have an interest in, the outcomes of that body. Similarly one would not have the fox guard the hen house.

And although Judge McMillan recognizes the arguments for secret investigations of judges, so as not to expose them to frivolous or scandalous allegations that ultimately prove unfounded, such investigations should not be conducted by persons with any connections to the legal system (such as the existing composition of the Judicial Qualifications Commission.) Because there are only two lay members of the commission on any panel at any given time, and because a majority decision is all that is required to take action against (and likewise decline to take action against) any judge complained of, the lay constituency has no power to overturn the decision of the legal establishment's representatives on the commission. As former lay member of the JQC, and now State Representative Curtis Richardson noted, it appears that "the judges on the JQC are trying to protect their fellow sitting judges." (Fl. Bar Journal, Sept. 15, 1999) Such a system is patently unfair to a judge that is unpopular with his colleagues on the bench or with members of the Bar. Nor is such a system fair to the citizens, or serve any purpose toward promoting public confidence the judiciary.

Interestingly, there exist rules of procedure and conduct for lawyers and judges

which require they refrain from any conduct in which their impartiality is questioned. So much so, that a juror related to a litigant, lawyer or judge, or one who has a close relationship with one, can be challenged for cause from sitting on a jury. Simply stated, the right to an unbiased jury of one's peers is a right guaranteed by our Constitution. It is remarkable that a judge accused of misconduct has less right to impartiality than a person accused of the most heinous crimes. The floor established by the Due Process Clause requires "a fair trial in a fair tribunal" by a judge with no actual bias for or against any litigant or who has an interest in the outcome. *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712 (1975). What could be more transparent than a trial wherein the JQC investigated the crime, filed the charges, employed the prosecutors and then sat as judge and jury. Quite frankly, the JQC finds and recommends whatever is wanted before the trial ever commences. Furthermore, the rejection of the stipulation between Judge McMillan and the JQC by this Court certainly gives the impression that the JQC was under a mandate to find Judge McMillan guilty on all charges despite whatever evidence would be presented.

A clear check and balance is required for due process to have meaning. We formed this great nation to escape the tyranny of a king who punished his citizens as he pleased, no matter how arbitrary and capricious his whim. This is why we do not allow the local police department to arrest a defendant, charge him with the crime,

appoint a member of the department to prosecute a defendant, and then empanel a jury of police officers while the Chief of Police acts as the judge. What a ridiculous notion of justice that would be. Due process would be an illusion.

If there should be such secret investigations, the commission should be empanelled in much the same fashion as a grand jury, composed of citizens without bias or prejudice for or against the judicial branch. The historical purpose of the grand jury was to protect the citizens from the unfettered power of the government. Why should judges not be protected in the same fashion from citizens or judicial commissions with a composition predominantly of those with direct ties to the legal profession? Such a system would protect both the judges from frivolous or scandalous complaints, as well as protecting the public from unfit judges, regardless of how powerful or popular they might be. That system would truly enhance public confidence in the judiciary. (This is the premise behind legislation such as The Judicial Accountability and Integrity Law, with ballot initiatives underway in 26 states.)

The JQC has Demonstrated a Pattern of Compensatory Bias

In subsequent paragraphs, Judge McMillan will outline a pattern that appears to exist within the JQC's investigative process and then in the hearing panel that allows for selective prosecution of judges. Judge McMillan is aware of numerous

instances of judicial misconduct perpetrated by judges within the Twelfth Judicial Circuit and elsewhere. Some of these instances were brought to the attention of the JQC by the filing of formal complaints, and others have been summarized by a Manatee County Citizen in a complaint against the JQC itself for malfeasance (attached). In every instance, the investigative panel declined to find probable cause.

This fact is important, as it appears that the JQC is only actually concerned with the "perception" of the integrity of the judiciary, not the "actual" integrity of the judiciary. If there is media coverage of misconduct, the JQC appears more amenable to the finding of probable cause and subsequent prosecution of the judge.

Another tactic of the JQC is its propensity to "leak" evidence of their "secret" investigations once a judge is "in their sights." (See the most recent case involving Judge Cynthia Holloway in Hillsborough County) In Judge McMillan's case, information was continually leaked to the press concerning the investigations. In some instances, the media learned of such closed-door happenings before Judge McMillan. Why might this be useful to the JQC? It is Judge McMillan's guess that the JQC is trying to force the judge to resign, or in the alternative, "create" a public perception problem for the targeted judge so that this Honorable Court will find irreparable harm to the judiciary so as to warrant whatever sanction the JQC seeks.

This pattern of conduct raises serious questions about the methodologically-

flawed system of policing judicial conduct in Florida. The JQC's pattern of protecting judges on one hand, and targeting judges on the other hand creates a system of "compensatory" bias against the judges they target.

This is exemplified by the facts of *Bracy v. Gramley*, 117 S. Ct. 1793, 520 U.S. 899 (1997). Bracy was convicted of murder at trial in front of then-Judge Thomas J. Maloney. Maloney was later convicted of taking bribes from criminal defendants. In particular, Judge Maloney took bribes from criminal defense lawyers to "fix" certain murder cases. Bracy did not bribe Judge Maloney, who appointed a former associate in Maloney's firm to represent Bracy. Bracy's attorney announced that he would be ready for trial in just a few weeks and asked for no additional time to prepare for the penalty phase in Bracy's case. The trial was held, sandwiched in between two murder trials where Maloney was bribed and which resulted in favorable outcomes for the defendants.

Bracy claimed, and the Supreme Court found, that the bribes resulted in the Judge being biased against the State and for the defendants in those cases, but also induced a "compensatory bias" against criminal defendant's who did not bribe him so that he did not appear "soft" on criminals. The Court held that this compensatory, "camouflaging" bias would violate Bracy's due process.

Likewise, the JQC has such a compensatory bias built into a system which

allows closed-door, secret investigations, where if there is a finding of "no probable cause", the complaint is forever sealed from the eyes of the citizenry. (And if the JQC was composed of unbiased individuals, Judge McMillan might agree to secret investigations and the sealing of unfounded complaints.) On the other hand, if there is media coverage, or public exposure of the alleged misconduct, the JQC is compensatorily biased against the judge so that the JQC appears "tough" on judicial misconduct.

II. The Court has failed to conduct an independent examination of the record.

The Court has stated that the findings of the JQC are a "persuasive force and are given great weight by this Court" (p.9); thus the Court should be able to have faith that findings and recommendations from the Judicial Qualifications Commission are reliable. It certainly appears that this Honorable Court relied on the Commission's findings in the case at bar, since Judge McMillan's evidence and witnesses are wholly ignored in the Court's decision. Judge McMillan called a multitute of witnesses and presented over 300 exhibits, most of which were stipulated into evidence by the JQC without requiring any evidentiary foundation, and which were unrefuted and unimpeached by the JQC. Yet no mention of the substantial number of witnesses and documents presented by Judge McMillan were even considered by either the JQC or

this Honorable Court. The Court must, under the present scheme of oversight for the judiciary, make an independent review of the record and the evidence contained therein, and compare that with the Commission's findings to ensure that the findings are consistent with the actual evidence adduced at trial. Particularly in cases where there is the potential for partiality, such as the case at bar.

A reading of the Courts opinion in this case tracks remarkably like the JQC's Findings, Recommendations, and Conclusions. The Court even cites to the same factual errors in the evidence that the JQC makes. These errors, patent on their face, were corrected in Judge McMillan's briefs, yet the Court ignores these corrections as if the Court never checked the voluminous record in this case.

While Judge McMillan could address each of the charges individually, pointing out specifically the defense evidence which the Court overlooked or misapprehended, to do so would simply be a recreation of his Response to the Order to Show Cause and Rebuttal Brief previously filed. Accordingly, Judge McMillan will reference but seven examples which provide evidence for his conclusion that the Court could not have conducted and independent review of the record.

1. **Exculpatory Evidence was Deliberately Omitted from the DUI Transcript**

Judge McMillan is accused of deliberately inserting him into a case in which he had a conflict of interest and setting an unusually high bond. The Court states "A transcript of the first appearance proceedings on Mr. Ocura's case reflects what happened next when Judge McMillan addressed Mr. Ocura." The Court then recreates a **partial** transcript of the DUI proceeding in question. (p.20); the same partial transcript the JQC produced in its Findings, which deliberately delete a crucial sentence which goes directly to Judge McMillan's intent. Below is the transcript **in it's entirety,** with the deleted information highlighted in bold print:

Transcript of Ocura's Bond Hearing

Judge McMillan: Mr. Ocura, you're here on a DUI charge. Mr. Ocura, I'm the

> guy that was behind you in the car that called the police, so I'm probably not a good person to address the issue of your bond, except that you blew over a .30. And quite frankly sir, you almost hit several cars. I know you probably don't remember this, but at one point you made a U-turn and I thought you were going to run head-on into me**. SO I'M GOING TO HAVE YOU COME BACK IN FRONT OF ANOTHER JUDGE WITHIN 24 HOURS.**
> *(emphasis added)*

(Prosecutor motions to get judge's attention)

Judge McMillan: However, (to the prosecutor) do you have anything on him?

Prosecutor: Mr. Ocura has four, possibly more than four prior DUIs…

Judge McMillan: Okay, I'm going to set your bond at $100,000 for now, but I'm

going to have it reviewed by another judge later, tomorrow, okay? And make sure I'm not out of line. Okay, so we'll see you tomorrow.

It is highly suspect to deliberately delete Judge McMillan's initial decision to pass on Ocura's case without setting a bond. It goes to the heart of the JQC's, and now the Court's theory that Judge McMillan manipulated his way into the hearing for the sole purpose of setting Mr. Ocura's bond. Judge McMillan's initial decision clearly and indisputably proves that his intent was NOT to set Mr. Ocura's bond, but to pass on the case.

Also deleted from the transcript is the State Attorney's interjection to Judge McMillan regarding Mr. Ocura's "four or more prior DUIs," and thus, the danger he would pose to the community unless Judge McMillan set a bond. (See also testimony of ASA Steve Viana) It is only then that Judge McMillan set Mr. Ocura's bond, with the provision that his decision be reviewed by another judge within 24 hours to "make sure I'm not out of line, " – acting not out of vindictiveness, as the Court asserts (p.26), but out of concern for public safety, even while being mindful of the rights of Mr. Ocura.

Would the Court tolerate such tampering with the evidence as occurred in this case? The withholding of exculpatory material has been roundly condemned by every court in the nation following the USSupreme Court's decision in *Brady vs Maryland*.

2. The Court Relies Upon Nonexistent Testimony

The Court states that "Sheriff Wells testified that he chose to support Judge Brown simply because he felt he was the better candidate of the two." (p.10) Had the Court conducted an independent review of the record, it would have noted, as Judge McMillan has stated in prior pleadings, particularly his Rebuttal brief, that there is absolutely no such testimony anywhere in the record. Rather, in an attempt to explain why he endorsed George Brown, Sheriff Wells changes his sworn testimony five times, as the defense impeaches false statement after false statement.

3. The Court Ignores Evidence of Pressure, Intimidation and Threats

The Court states "Judge McMillan attempted to justify his conduct on the grounds that there was a conspiracy in Manatee County to prevent his election. He asserted that his election was necessary to break up such conspiracies of power. The JQC found no factual basis or merit for this contention." (p.24)

The Court has misapprehended Judge McMillan's position, for nowhere in the record does he make this assertion. Nonetheless the evidence of an organized effort by those in power to derail Judge McMillan's election and seek his removal from office was so overwhelming that the JQC Hearing Panel addressed and condemned the appearance of it in their findings. The panel noted that "such criminal conduct is of course inexcusable…[I]t is also something that cannot be justified by this body or

by the judiciary and the officials of the local community…The local judiciary must recognize the apparent perception of this problem." (FC&R 14-16)

Judge McMillan does not attempt to justify any alleged misconduct by blaming others for his actions. He merely asks that the Court reaffirm its position in *In re Davey* and *In re Norris* that all circumstances bearing on fitness to hold office are relevant. ("In determining fitness to hold judicial office, this Court looks at the relevant circumstances surrounding each particular act of misconduct." *In re Davey*, 645 So. 2d 398 (Fla. 1994)). The Florida Supreme Court has held that personal crisis', the influence of outside acts, and isolated incidents, are all relevant in their decision to discipline a judge if an allegation is sustained. *See*, *Davey* (misconduct was an aberration produced by a highly-charged law firm breakup); *In Re Inquiry Concerning a Judge – re William Norris, Jr.*, 581 So. 2d 578 (Fla. 1991) (judge who drove drunk, discharged a firearm, was acting under a one-time personal crisis.) All evidence and testimony concerning any issues of "highly-charged' situations, personal crisis, or other mitigation must be given due consideration by the Panel when recommending discipline to the Court.

In finding that Judge McMillan's belief that public corruption existed was "without basis in fact" (p.25), in concluding that McMillan provided no evidence that

Wells had been pressured to support Brown, and in failing to consider the circumstances of this "highly charged" situation and this "one-time personal crisis facing Judge McMillan" the Court has overlooked the following evidence:

- Exhibit #326 is the deposition of Paul Sharff, business partner of the Sheriff's wife and President of the Republican Executive Committee:
    - When asked if he had any discussions with George Brown regarding tactics to intimidate Matt McMillan from running for Judge, Mr. Sharff invoked the Fifth Amendment.
    - When asked if Sheriff Wells informed him he was being pressured by GeorgeBrown, Mr. Sharff invoked the Fifth Amendment.
    - When asked if he informed Judge McMillan that Sheriff Wells was being pressured by Judge Brown for his endorsement, Mr. Sharff invoked the Fifth Amendment.
    - When asked if he informed Judge McMillan that that George Brown was calling in favors from law enforcement and others he had helped, Mr. Sharff invoked the Fifth Amendment.
    - When asked about his knowledge of a powerful group of about 40 men, many of them judges, who belong to a group called the Good 'Ole Boys, and whether he discussed their influence with Judge McMillan, Mr. Sharff invoked the Fifth Amendment.
    - When asked if he had any discussions with Chief Judge Tom Gallen concerning the campaign, Mr. Sharff invoked the Fifth Amendment.
    - When asked if he informed Judge McMillan the Bradenton Herald was being pressured by George Brown and would twist fact to hurt Judge McMillan, Mr. Sharff invoked the Fifth Amendment.

- When asked if he had knowledge of George Brown possessing illegally obtained expunged documents regarding Susan McMillan , Mr. Sharff invoked the Fifth Amendment.

- When asked if he was aware of any vandalism or threatening phone calls toward the McMillan's issued at the direction of George Brown, Mr. Sharff invoked the Fifth Amendment.

- Exhibits 159 and 161 are photographs of graffiti applied to Judge McMillan's front door and garage. The words "Lying Bitch" spray-painted in large letters across the door, along with a police report concerning the incident.

- Exhibit 162 is a police report regarding a male voice telephoning the McMillan home. Mrs. McMillan answered and was threatened. The report also indicates that later that night the McMillan's vehicles were pummeled with eggs.

- Exhibit 163 is a police report of a series of phone calls placed to Mrs. McMillan's business, and answered by her secretary. The caller made threatening statements, including "Make sure you tell that bitch I'm gonna make sure she's run out of business."

- Exhibit 177 is a transcript of a tape-recorded message left on Judge McMillan's home voice mail, ending with the words "I sure hope you like your eggs f- - king eggs well-done, you mother f—king sons of bitches." Later that evening, their vehicles were pelted with eggs.

- Exhibit 100 are the by-laws of the Fraternal Order of Police, indicating that the organization violated their own policy by failing to interview Judge McMillan prior to endorsing Judge Brown.

- The testimony of Jesse Carr (T. 1330), the Chair of the County Republican Party, whereby he confirms his sworn affidavit states "Charlie was under a lot of pressure by a lot of, quote, friends of George Brown's, to endorse him, and felt he had not choice."

- Exhibit 158 is a cover letter to Assistant Staff Counsel of the Florida Bar from a local attorney who represented Judge McMillan on a bar grievance filed by the Family Court Mediator in the midst of the campaign. (This attorney was

originally a member of George Brown's campaign committee, but withdrew his support when this grievance was filed.) The letter reads in part; " I have to tell you I have some serious questions about Mr. Bornhauser's motive in this regard. Matt has come under criticism and attack from people in the court house because of his decision to run against one of our long time standing judges. This complaint lacks merit by so much that it raises a real serious question about the motive...It should be summarily dismissed."

- Exhibit 159 is a letter from Assistant Staff Counsel of the Florida Bar to the complainant of the above grievance. The complaint was summarily dismissed.

- Exhibit 166 is a frivolous complaint filed by Probation Manager Shirley Crawford during the campaign against Mrs. McMillan's business. Mrs. Crawford's relation to the incumbent is described in the answer to Charge 9. The complaint was proven to be unfounded.

- Exhibit 167 is a frivolous complaint filed with the County Commission and Dept. of Corrections during the campaign against Mrs. McMillan's business. It was proven to be unfounded and summarily dismissed.

- App. A of Judge McMillan's Rebuttal Brief is a motion (moving to deny a motion to intervene as Amius Curiae) containing the sworn testimony of the Young Republican Club President, Brian Tyle, who was pressured to cancel an appearance of Judge McMillan, at an event in which both candidates were invited.

- Exhibit 183 is a transcript of a commercial aired by Judge McMillan's campaign specifically designed to counter the "whisper campaign" and the false rumors spread about his wife's "cocaine addiction" that Mr. Sharff had foretold.

- Exhibit 181 is the transcript of a sworn statement by Assistant Public Defender Jeffrey Rapkin further elaborating on the election "whisper campaign" that had been designed by George Brown supporters to destroy Judge McMillan's and his wife's reputation and character. The rumors described match those that Mr. Sharff had foretold. This exhibit also contains testimony that Mr. Rapkin was forced by the Pubic Defender to file a frivolous appeal on one of Judge McMillan's cases, for purposes of embarrassing Judge McMillan politically, despite the fact that the appeal had no legal basis and was not in the

defendant's best interest. Mr. Rapkin also states he was pressured by George Brown and others to recuse McMillan from his cases for the same reasons.

- Exhibit 188 is the transcript of an interview with Probation Officer Lou Evans. She describes her view of the election "whisper campaign" that had been designed by George Brown supporters to destroy Judge McMillan's reputation and character and that of his wife's. She also describes Shirley Crawford, the Probation Manager, relaying she had been asked by Judge Brown to "dig up dirt on the McMillans."

- Exhibit 187 is a sworn affidavit regarding the probation office employees being instructed by their superior to "lie to Judge McMillan" when he requested information. (Relevant as to Charge 9)

- Exhibit 175 is an affidavit outlining false statements given to the newspaper by Chief Judge Tom Gallen in an effort to embarrass Judge McMillan.

- Exhibit 174 is the newspaper article referenced above with a photograph of Chief Judge Tom Gallen posing in Judge McMillan's office, contemporaneous with his false statements.

- Exhibit 164 are photographs of Mrs. McMillan's place of business, in shambles. The large circular object amidst the debris is a concrete block the size of a small coffee table which was heaved through her office window the day after citizens filed an amicus brief on Judge McMillan's behalf. (To the extent that any example of misconduct occurred after the campaign, it is included here to illustrate a continuation of the pattern of intimidation that began during the campaign.)

- Two Amicus Curiae briefs filed by the citizens of Manatee County, one on behalf of 1200 citizens with signatures attached, and one on behalf of Citizens and Registered Voters of Manatee County and the State of Florida. The former states "The JQC displays blatant bias… by ignoring the overwhelming mitigating circumstances, despite their acknowledgement of significant evidence supporting Judge McMillan's assertions of threats, intimidation, physical violence and political conspiracy against him and his family, and by incorrectly and unreasonably concluding such circumstances are 'irrelevant; " and the latter states "It is neither reasonable nor proper to ignore the impact

of this environment when evaluating the conduct of and choosing the appropriate level of punishment for Judge McMillan." A motion to join those amicus curiae by a Citizen City Advisory Board member with similar comments was denied by the Court.

- The Court has misapprehended Judge McMillan's testimony regarding the atmosphere during his campaign and his reasons for not dropping out of the race in the face of such adversity.

"We sent my children up north for a month for two reasons: One, so we could do nothing but work on the campaign. But second of all, because the atmosphere here in town was they were going to arrest us any time. They were looking for reasons to mess with us..

Our homes were vandalized, we were threatened constantly. My wife's business had complaints filed against her. The Department of Corrections sends people to her program to teach them what a program looks like so that when they go out throughout the state to monitor programs, that they know what a good one looks like to compare it against. And they're complaining about her program. A bar grievance is filed against me that is absolutely ludicrous. Things were happening during this campaign that nobody should have had to endure." (T. 1211-12)

"When Mr. Sharff came to me, I've got to tell you folks that they motivated me. If somebody were to come in here and slap me right now, I'd go out that door; I don't want a confrontation. But if you were to slap my wife right now, you wouldn't be able to get out of this room. And that's what they did, they went after my wife, and that wasn't necessary. Because this is America; that shouldn't be allowed." (1390-91)

Candidate McMillan, an attorney, a husband, a father, was not only subject to the typical stresses of a judicial campaign (anxiety, apprehension, lack of sleep, sheer physical and mental exhaustion), but the record is clear that he was also subjected to the extreme conditions of a "personal crisis" of such an extraordinary nature that any

poor judgment displayed by Judge McMillan is understandable. Judge McMillan asks that the Court reaffirm its position in *In re Davey* and *In re Inquiry Concerning a Judge - Norris*, allowing due consideration for the mitigating circumstances that arose from an atmosphere where his home, his wife, his children and his livelihood were under constant assault. It is difficult to imagine how even the strain of a "highly-charged law firm break up" (*In re Norris*) could surpass the level of pressure and stress that Judge McMillan endured.

4. The Court Relied Upon Evidence Demonstrated to be False

The Court states "Judge Brown submitted his calendars for those years" and relies upon the JQC's acceptance of those calendars to refute Judge McMillan's representations. **The official dockets used for Judge McMillan's research were brought into the Courtroom** by the Office of the Clerk of the Court for demonstrative purposes during this trial. **In plain view of the panel, for their observation and inspection, Judge Brown's calendars were cross-referenced with the official court dockets, demonstrating numerous instances where the official entries were inconsistent with Judge Brown's personal calendar**, usually because the court appearance Judge Brown claimed to be handling was actually covered by another judge. These misrepresentations appeared to be intentional because, for example, at times Judge Brown's calendar referenced the actual number of defendants

he supposedly handled during a particular proceeding on a particular day, even though the court dockets proved another judge was actually presiding. This demonstration and the inconsistencies displayed went unaddressed and unrefuted by the prosecution. (T. 808 – 813).

If the Court had conducted an independent review of the record, surely it would have questioned the integrity of the Hearing Panel for disregarding such a powerful evidentiary demonstration and relying upon discredited evidence in convicting Judge McMillan.

5. The Court Failed to Rule on Judge McMillan's Motion to Correct the Scrivener's Error

The Court finds that Judge McMillan's figures regarding the amount of time George Brown spent holding court "were simply untrue." The amount of research involved in verifying these numbers was enormous, involving several court researchers, whose testimony as to their assigned task, their instructions to be truthful, and their findings, were stipulated into evidence. (T.986, Exh 7-10) To further assure the accuracy of the records in preparation for his final hearing, Judge McMillan procured the services of a systems analyst with expertise in accounting and auditing by the name of Jean Thomas from out of state to come to Florida to review the work of the court researchers by cross-referencing Exhibits 7 thorough 10 to the actual dockets, re-doing the math, and testifying as to the accuracy of the results. She further

testified as to Judge McMillan's insistence that she be truthful even if she found mistakes, and she testified that even before she calculated the math, it was obvious to the naked eye from looking at the dockets that George Brown was spending far less time in court than the other Manatee county judges. The deposition of Ms. Thomas was admitted into evidence, over the vigorous objection of the JQC prosecution.

Coincidentally, the JQC general counsel, acting as Clerk during the trial mislabled Jean Thomas' deposition as "Exhibit 237, Deposition of Rose Mazarro." Judge McMillan then filed a Motion to Correct the Scrivener's Error, asking that Ms. Thomas' deposition be properly labeled so that the court would have access to it in its review of the record. The Court failed to ever rule on Judge McMillan's Motion, ignoring this crucial piece of evidence, which goes to accuracy as well as intent, thus making a thorough review of the record impossible.

6. The Court ignores all evidence contradicting their assertion that there is "absolutely no credible factual basis for Judge McMillan's assaults on the local justice system and a sitting county judge."

The Court has overlooked the evidence cited above, as well as the substantial improvements Judge McMillan implemented in the first year of his tenure, including the establishment of a Collections Court, a Restitution and Compliance Court, mandatory random urinalysis and treatment for drug and alcohol offenders, HIV education for prostitutes and johns, blood donation in lieu of community service

work, the revival of Spanish plea forms, and the requirement that fines, court costs, and restitution be paid in equal monthly installments. The exhibits listed below, which confirm that Judge McMillan's criticisms of both the incumbent and the local justice system were both factual and a valid concern for the citizens of Manatee County.

The exhibits which follow were verified at trial by independent researchers and were found to be virtually 100% accurate. For example, when published legal researcher Maura Malloy, an independent expert witness, was asked if she found "any errors, any mistakes, and anything that did not comport with what the public record showed," Ms. Malloy answered "No." (T. 1025). See also statistician Wes Skinner (T. 1006, 1008) and deposition of Jean Thomas, who characterized the research as "Very – extremely accurate…I was rather impressed with it."(Exh327, p. 28)

- Exhibit 72, page one, is a composite of bar graphs focusing on Prostitution. Page one compares Judge Brown's **Fine Collection** rate with Judge McMillan's collection rate.
  - **Brown: 19%**
  - **McMillan: 79%**

- Exhibit 73 is a composite of bar graphs focusing on **Restitution Collection**. Page one uses Clerk's office printouts to compare the years Judge Brown was on the bench with a 27% restitution collection rate and the years all judges were on the bench, 1991 – 1998 with a 31% collection rate the 1999 collection rate of 55%. (Part of the 1999 figure is skewed lower due to Judge McMillan sharing the criminal bench with Judge Gilner part of the year.)
  - **Brown: 27%**

- **All judges: 31%**
- **McMillan: 55%**

- Exhibit 73 page 2 separates out Brown and McMillan cases from the influence of other judges and examines petit theft, domestic battery, criminal mischief and DUI **restitution collection** rate. Judge Brown's collection rate ranges from 40% - 62%, for an average collection rate of 57%. Judge McMillan's collection rate ranges from 77% - 100%, for an average of 85%.
  - **Brown: 40%-62%**
  - **McMillan: 77% - 100%**

- Exhibit 74 is a bar graph comparing the percent of petit theft cases in which Judge Brown **waived or reduced fines and court costs** at sentencing: 47% with Judge McMillan's 12%
  - **Brown: 47%**
  - **McMillan: 12%**

- Exhibit 75 is a bar graph comparing the amount of Article V **Court Facility Fee collected** by Judge Brown since the ability for the court to asses the fee began: $0 with Judge McMillan during the same length of time: $89,608.
  - **Brown: $0**
  - **McMillan: $89,608**

- Exhibit 76 is a composite of bar graphs focusing on **investigative costs**. Page one uses Clerk's office printouts to compare the years Judge Brown was on the bench with a 56% restitution collection rate and the years all judges were on the bench 1994 – 1998 with a 57% collection rate with Judge McMillan's **collection rate** of 70%.
  - **Brown: 56%**
  - **All judges: 57%**
  - **McMillan: 70%**

- Exhibit 76 pages 2 and 3 are bar graphs based upon a computer-generated random list of case numbers comparing the percent of cases in which Judge Brown ordered **investigative costs**: 17%-18% with the percent of cases for Judge McMillan: 40%.
  - **Brown: 17-18%**

- **McMillan: 40%**

- Exhibit 76 pages 4 and 5 are a bar graphs comparing the percent of cases in which Judge Brown **ordered investigative costs** at arraignments: 15% and at pretrials: 38% with Judge McMillan's percent of cases at arraignments: 26% and at pretrials: 64%.
  - **Brown: 15%, 38%**
  - **McMillan: 26%, 64%**

- Exhibit 77 is a composite of bar graphs focusing on costs of supervision. Page one compares the **costs of supervision collected** the years Judge Brown was in county court: $408,974, the years all judges were in county court 1994 – 1998: $415,640 with Judge McMillan's $512,140.
  - **Brown: $408,974**
  - **All Judges: $415,640**
  - **McMillan: $512, 140**
  - **A $100,000 increase** in costs of supervision alone in only one year!

- Exhibit 77 pages two and three compares costs of **supervision collected per defendant** at pretrials and arraignments for Judge Brown: $55 and $72 with Judge McMillan: $111 and $105.
  - **Brown: $55, $72**
  - **McMillan: $111, $105**

- Exhibit 78 is a composite of bar graphs focusing on **Costs of Supervision Deletions**. Deletions are monies that were previously ordered and subsequently uncollected that are "wiped out" of the computer system by the judge's order; thus this money does not show up as "owed" in county printouts of uncollected fees. Exhibit 78 page 1 and 2 compare the amount of money deleted by Judge Brown in one month at arraignments and pretrials: $9,690 and $900 with Judge McMillan's $1,590 and $40.
  - **Brown: $9690 and $900**
  - **McMillan: $1590 and $40**

- Exhibit 78 pages 3,4,5, and 6 compare percent of cases with **Costs of Supervision Deletions**
  - **Judge Brown: 49% 45%, 48%, and 49%**
  - **Judge McMillan: 20%, 7%, 19% and 0%.**

Statistically, page 6 (49% to 0%) is the most accurate since it is based upon a computer-generated random selection of case numbers and the influence of other judges has been eliminated.

- Exhibit 79 is a complex composite of bar graphs and statistical analyses that use county documents and regression analysis in a progression of illustrations that lead to mathematically increasingly accurate depictions of the amount of fines collected and deleted by Judge McMillan as compared to his opponent. The composite demonstrates that the county court printout collection rate on page one of 83% for Judge Brown and 83% for other judges 1994 – 1998 on page 1 is artificially high due to the amount of monies deleted by those judges.. And **the 91% collection rate in 1999 for Judge McMillan** on page 1 is actually relatively accurate because the amount of deletions in 1999 was half of what it was the previous years.(page 2,3,4). The regression analysis on page 5 shows the effect of deletions on collection rate and demonstrates that 1999 was an "outlier" year, indicating that Judge McMillan's results were highly unusual and not due to chance while the collection rate for previous years was inflated, and when controlled for deletions, was actually closer to 60% (at the intersection of the x and y axis.)

- Exhibit 79 pages 6 and 7 is a bar graph comparing **the amount of fines deleted** at arraignments and pretrials in one month:
  - **Judge Brown: $5184 and $904**
  - **Judge McMillan: $2131 and $161.**

  Page seven factors out the influence of other judges.

- Exhibit 79 pages 8 and 9 are bar graphs comparing the overall percent **of outstanding fines deleted** by Judge Brown: 19% and 14% with Judge McMillan: 8% and 0%. Page 9 (14% and 0%) is statistically the most accurate because it is based upon a computer-generated list of random case numbers and the influence of other judges has been factored out.
  - **Brown: 19% and 14%**
  - **McMillan: 8% and 0%**

- Exhibit 79 pages 10, 11, and 12 show the **fine collection rate** without the influence of deletions at pretrials, docket sounding and by computer-

generated random case numbers. Judge Brown's collection rate was 56%, 63% and 66% respectively, compared with Judge McMillan's 76%, 84% and 98%. Page 12 (Brown: 66%, McMillan: 98%) is statistically the most accurate because the deletions have been eliminated, the influence of other judges have been eliminated, and the results are based on random case numbers.

- **Brown: 66%**
- **McMillan: 98%**

It is incredulous to find that there is no room for improvement in the judiciary, or that Judge McMillan should remain silent on that issue. If there had not been a problem in the areas cited, Judge McMillan would not have been able to have such a tremendous positive impact. The Court has also overlooked the US Supreme Court's position that even judges and judicial candidates have a right to criticize the administration of justice, and the judiciary is not immunized from legitimate attacks on its effectiveness. In *Bridges v California*, 314 U.S. 252, 62 S. Ct. 190, 86Led. 192 (1941), the US Supreme Court stated:

> "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind...on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion, an contempt much more than it would enhance respect." Cited with approval in *In re Complaint Against Judge Harper*, 77 Ohio St. 3d 211, 673 N.E.2d 1253 (OH 1996)), "Again, the Canons do not, and should not preclude criticism of the judiciary." *Id.*
>
> "There is practically universal agreement that a major purpose of ...[the

First] Amendment was to protect the free discussion of governmental affairs,...of course... [including] discussions of candidates." *Id*. citing *Mills v Alabama*, 384 U.S. 214,218 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484, 488 (1966).

7. The Court Ignores the Overwhelming Evidence of Judge McMillan's Fitness for Office.

The Court has stated that "the object of disciplinary proceedings is not for the purpose of inflicting punishment, but rather to gauge a judge's fitness to serve as an impartial judicial officer." (p.21) Court finds Judge McMillan's "conduct is fundamentally inconsistent with the responsibilities of judicial office." (p.21) In reaching its conclusion that Judge McMillan is unfit to serve, that he has harmed the public's confidence in the judiciary, and that he has somehow demonstrated an inability to sit as an impartial jurist, the Court has overlooked the unrefuted, unimpeached testimony of all witnessed called who personally appeared in front of Judge McMillan, and the unsolicited exhibits which follow:

a. Testimony Concerning Fairness, Impartiality, and Dignity to the Bench

Testimony of Private Criminal Defense Attorney Jeffrey Haynes

Mr. Haynes had practiced before Judge McMillan every week since he had been on the criminal bench. Mr. Haynes testified "I certainly don't have anything but positive things to say…We certainly never had a bad experience as far as the cases he's handled" (T. 1377). He described some of Judge McMillan's sentencing

practices and policies that were "somewhat innovative and different" with respect to prostitution cases and DUI (T. 1377-8) "I've certainly never had a complaint about any of the rulings either for me or against me. I've never considered his impartiality to be in question. And as far as being in front of him, it's certainly been enjoyable." (T. 1377) He indicated that Judge McMillan had "an appropriate handle and understanding of the law and applied it faithfully and fairly to all that came before him." (T. 1378). He concluded his testimony by saying "My experience with him has always been very positive… I've enjoyed practicing in front of him, and I would certainly like to continue practicing in front of him.

Testimony of Assistant State Attorney Lena Athanasiou

Ms. Athanasiou appeared solely before Judge McMillan during his tenure on the criminal bench. She testified "I found him to be very fair…He allowed both the State and the defense to present their arguments, their testimony, their evidence in an orderly manner. He allowed ample opportunity for argument, rebuttal." (T. 1371)…He was very courteous. It was a pleasure to appear in front of him.… Victims were very important in his courtroom, and he often heard from them. And he was also courteous to the defendants and allowed them to be heard. .." (T. 1372) If a motion came up before him, he would often do a considerable amount of research over and above what the attorneys had presented him and write opinions as to his

ruling. And they served as a learning basis for many of us." She had no question as to his fitness for office.

Testimony of Prosecution Witness Assistant State Attorney Ron Gale

Ron Gale was called by the JQC Prosecution as a witness **adverse** to Judge McMillan. He had practiced daily in front of Judge McMillan for a period of months. He testified that he and other the prosecutors in his office "enjoyed practicing in front of Judge McMillan." When asked by Mr. Tozian "Of the four names [of judges] that you named, how would you rate [Judge McMillan] as a judge in terms of the decisions he made and the manner in which he treated litigants and lawyers and court personnel, et cetera. Mr. Gale answered: "I would rate Judge McMillan very favorably to those other judges." (T. 663)

Testimony of Misdemeanor Division Chief of State Attorney's Office Don Hartery

Mr. Hartery testified "My observations from his rulings and from appearing in front of him is that he was remarkably consistent in following the law on his legal rulings. And I thought he was fair in judging the acts on all the cases I reviewed. " His prosecutors "enjoyed working in front of Judge McMillan." (1364-5). Hartery further testified that a judge probably hears "several hundred, possibly up to one thousand issues or cases on a weekly basis" (T. 1367), and over the years that Judge McMillan has been on the bench, he can only recall "one, but only one" complaint

from a prosecutor. (T. 1366)

Testimony of Assistant State Attorney Steve Viana

Mr. Viana was assigned to Judge McMillan's division in 1999. He testified that "across the board, Judge McMillan was very fair, extremely patient and allowed not only the State but also the defense to present their arguments, whether it was in motion or during trial. He seemed to actually listen to what we have to say. And on quite a few occasions from motions, he would actually write written opinions for us to review. Whether it was in our favor or not, it was still helpful." (T. 1386) He testified that on several occasions those written opinions cited cases that had been argued by neither the prosecution or the defense. (T. 1386) Mr. Viana concluded by indicating that he had "no qualms about Judge McMillan's performance as a judge at all."

Testimony of Defense Attorney Jeffrey Rapkin

Mr. Rapkin is the son of Circuit Court Judge Harry Rapkin and appeared before Judge McMillan at least three times per week in 1999 when he was an Assistant Public Defender. Mr. Rapkin was visibly uncomfortable during his testimony, causing Special Counsel Tom MacDonald to laugh out loud on several occasions, disrupting the proceedings at least once. (T. 1126) In a sworn statement dated June

10, 1999, (Exhibit 181, p.9) Mr. Rapkin indicated it was "taboo to talk kindly of Judge McMillan… Anybody that comes forward to say these things that he's doing a regular job, a good job...we're worried 'What's our boss gonna think of that?' Was he a Judge Brown supporter? Are we gonna get canned?…We're all afraid of being black-listed. We're afraid of being fired."

His fears notwithstanding, during his testimony Mr. Rapkin indicated he expected fairness and got it from Judge McMillan (T. 1103); Judge McMillan showed no favoritism to either the prosecution or the defense; and he did not favor law enforcement in any way over the indigent defendants Mr. Rapkin was representing. (T. 1106). Mr. Rapkin testified "[Judge McMillan] handled the people who had addictions I think a lot better than most judges do." (T. 1104) When asked if Judge McMillan's system of structuring probationary sentences to ensure compliance was better than the system used by other judges, Mr. Rapkin replied "I thought the system was better." Mr. Rapkin described appearing in front of Judge McMillan as "a very positive experience." (T. 1103).

Testimony of Probation Officer Lou Evans

In a transcribed interview admitted without objection as defense Exhibit 188, Ms. Evans testified that Judge McMillan is "very approachable." "[He encourages defendants] if there is some type of substance abuse problem going on, whether

alcohol or drugs, to go get help. So he's really concerned about defendants, so they don't re-occur, you know, um, over and over again the same problem." (p.2)

Ms. Evans describes his innovative programs and sentencing practices he has brought to the bench which makes her job more enjoyable and effective. "Judge McMillan has tried to be very fair, very fair. ..He would like to send a message, if you want help, help is there. …because for years it's just been swept underneath the rug, nobody did anything about it. (p.7)

"He would like to see everybody coming together and working together. That's what he is trying to accomplish, I think presently, to try to get everybody to come together and work together and not feel threatened (p.3-4)...I would love to see him stay on the bench." (p.4) I think he's doing an excellent job as a judge (p.2)…"

Testimony of Teri Jones

Ms. Jones is the sister of a defendant sentenced by Judge McMillan on her third offense DUI. Her family was prepared for her to be "put away for a long extended jail period" (T. 1301). She recalled her sister's failed attempts at sobriety over the past decade and recounted the unusual and structured sentence Judge McMillan had handed down. (T. 1302). "And that particular day, the judge actually got an agreement from me that I would make sure along with other family members, that Mary got to her appointments to make sure she made her sentence (T. 1303)…" It

was slow going, but "…it clicked." "She really did blossom…"(T. 1303) Terri testified she "knows for a fact" her sister has not had a drink since then, and her four children have been returned to her. (T. 1304) In an unsolicited letter thanking Judge McMillan, she writes "You really hit home with my sister – and even a couple of guys that were in your court on a day I was there. …**We thank you so very much for your sentencing, your experience in this type of case, and for your realistic/no nonsense type of atmosphere**…**And most of all we are thankful to our Heavenly Father for directing Meri's case to your courtroom**." (Exhibit 274) She told the Panel "Meri could have been totally lost in the system and sent away for quite some time to jail and nothing else. So we are very thankful for him." (T. 1305)

Testimony of Trial Clerk Carol Pressimore

Mr. Pressimore was Judge McMillan's trial clerk during his tenure on the criminal bench, and Judge Brown's trial clerk before him. She had no personal relationship with Judge McMillan prior to his judgeship; in fact, she campaigned for George Brown. She testified of Judge McMillan

> "He was genuinely caring about the defendants, about implementing programs rather than just whether they were incarcerated or not incarcerated, getting them help for a drug problem, an alcohol problem, a violence problem. He was more one for implementing rehabilitation rather than giving him a credit-for-time-served and getting him out of jail." (T. 1313)
>
> "[He] treated everybody fairly, State and defense. Was – treated his court personnel wonderfully. Was very fair, was very

easy to work." (1313-14)

> "…He'd want to see every file, he'd want to see how people violated. And he would talk to the defendants and ask them, you know 'Why couldn't you pay this?' or 'Why couldn't you do your public service hours?' or 'Did you know if you didn't have the time to do that, you could donate blood instead of doing this?' He communicated with the defendants a lot. But I worked a lot more hours when he was on the bench." (T. 1313 –1315)

When asked if he appeared to be hard-working, Ms. Pressimore answered "Oh yes. That's why in the card [Exhibit 278] it says you know 'you've made so many victories along [the way]' – even though you may not think about it or realize it, you've made many victories along the way. Because he did." (T. 1314)

The Court may recall that Ms. Pressimore's card, listed as Exhibit 278, reads in part . . "…You've helped so many people. You have a genuine concern to want to help people and you do**. At times I'm sure you feel like the fight isn't worth it,** but you've made many victories along the way. ..I couldn't give this to you in person or else I would cry…" (*emphasis added)*

b. Exhibits Concerning Increased Public Confidence in the Judiciary as a Result of Judge McMillan's Tenure

- Exhibit 265 are the Minutes of the November 1999 **Crime Stoppers** organization. The minutes read "Mr. Brunner (President) suggested that Crime Stoppers send a letter to Manatee County's head judge stating **support of Judge Matt McMillan**. The motion was seconded by Mr. Gigliotti, voted on, and carried unanimously." *(emphasis added)*

- Exhibit 266 is a letter from the **Manatee Victim Rights Council** to Chief Judge

Thomas Gallen dated 2/21/00. The letter reads, in part, "..Our observations and the feed back we have received lead us to conclude that the programs Judge McMillan has instituted have had **a beneficial impact for victims and the court system as a whole.** As a result of his judgeship, there seems to be an increased level of collection of fines an court costs, and appreciable amount of restitution collected for victims and a higher degree of offenders that complete treatment programs. …Judge McMillan has been sensitive to issues that concern crime victims while at the same time remaining fair to both sides. **He has done an excellent job addressing longstanding concerns of this Council,** and we respectfully request that you **allow him to continue to serve this community** on the criminal bench **for the good of the community.** *(emphasis added)*

- Exhibit 267 are the August 1999 minutes of the Family Violence Council of Manatee. They read "Paul Barton [Director of Court Counseling Services] **shared how well Judge McMillan's system is working** to obtain compliance with batterers who are ordered to Batterer's Intervention Programs. He described several instances where batterer's just couldn't complete the program for some reason who were now managing to complete since they had to report back to the court on a monthly basis. Paul was making efforts to get some of the **other Judges to institute such a system."** *(emphasis added)*

- Exhibit 268 is a letter from the clinical manager of Manatee Glens, an addictions treatment provider within the **Department of Children and Families**, dated 9/14/99. It reads in part "Thank you for your support of our programs. I congratulate you on **your sincerity and commitment regarding substance abuse treatment.**" *(emphasis added)*

- Exhibit 261 is a letter to the editor from the **President of the 14th Street Business Owners Association** entitled ***Stiffer Bail Keeping Prostitutes Off the Street***. It is dated 3/10/99, two months into Judge McMillan's term. It reads "As an active member of the 14th Street Business Association…we were tremendously uplifted by the actions of Judge McMillan…**We, as concerned citizens applaud Judge McMillan** for his approach to putting more teeth in the law and reducing easy flow through the system with only a '"tap-on-the-hand' fine. Further, we challenge other officials to follow Judge McMillan's lead…" *(emphasis added)*

- Exhibit 263 is an article from the Bradenton Herald dated 3/15/99 *entitled "Judge Puts Own Spin on Passing Sentences**: Defense Attorneys and a Prosecutor Agree that Manatee County Judge Matt McMillan's Approach to Sentencing has Merit***." The article describes some of Judge McMillan's innovations such as random urinalysis, restitution payments in equal monthly installments, an HIVAIDs education classes for prostitutes and johns, and his positive reception amongst attorneys. *(emphasis added)*

- Exhibit 264 is a telephone message from **Probation Officer** Carrie Ann Green received 4/4/99. It reads "The way you've been sentencing people is working. She has really noticed a difference."

- Exhibit 269 is a letter from a **defendant** who was helped to become a "better, nonviolent person" due to Judge McMillan's sentencing. He write the letter simply to "express the lessons" that he has learned.

- Exhibit 271 is the March 2000 newsletter for the **Community of Holiday Heights**. It contains a column entitled "In Defense of Judge Matt McMillan." It reads in part Judge McMillan was elected because…voters wanted somebody who had a concern for what they saw lacking in the system…**There is no ground swell of public opinion that says the voters need to be saved from their decision.** We are rightly troubled to se individuals now trying **to subvert the will of the voters** and either remove Judge McMillan from the position to which he was elected or, at least send a strong message to anyone that may be contemplating following in his footsteps**. This is a threat to our freedom.** And that should trouble all of us!" *(emphasis added)*

- Exhibit 272 is the February 2000 Newsletter of **the Federation of Manatee County Community Associations** from which the above article Exhibit 273) was reproduced. It was written by the president of the association.

- Exhibit 273 is a letter from the CEO of the **Manatee Community Blood Center** dated 5/12/00 personally thanking Judge McMillan for his support in setting up the Community Service Program at the blood center.

- Exhibit 274 is a letter from the sister of a defendant sentenced by Judge McMillan, dated 4/5/00. It reads in part "I have been meaning to take the time to let you **know something very, very significant and utterly magnificent that you**

have done…and I'm absolutely positive you don't even know it. …It has been the better part of a FULL YEAR that Meri has been straight, sober, beautiful, fun, gorgeous, professional and hilariously funny. She is getting her four children back. She has gone back to college…She is back to the real and unique, beautiful woman and extraordinary Mother that she always was. Thanks to you. …We thank you so very much for your sentencing, your experience in this type of case, and for your realistic/no nonsense type of atmosphere…**And most of all we are thankful to our Heavenly Father for directing Meri's case to your courtroom**."

- Exhibit 275 is a letter from a **defendant** who, thanks to Judge McMillan's sentencing, has, been sober for six months – for the first time in 35 years.

- Exhibit 276 is a letter from a **defendant** sentenced by Judge McMillan who has been clean and sober for four months. She writes in part "I have witnessed women leave and come back like it's a revolving door…I trust your fair judgement in my case because I know you have me and my disease at your best interest.. If I work my AA program and my steps, I will live a clean peaceful and sober life."

- Exhibit 277 is a letter from a **defendant** thanking Judge McMillan "for giving me a chance to live a happy and drug free life. I really love myself today. I'm learning to deal with my every day problems without a drink or drug…So you see, I have much to thank you for…"

- Exhibit 279 is a card and a photograph of a **woman and her children**. The woman was sentenced by Judge McMillan and the card reads "Thank you very much for giving me the chance that I've always needed. This year Christmas will be great. I have all four of my children thanks to you and drug court."

- Exhibit 280 is a card from a **batterer** sentenced by Judge McMillan, dated 1/4/99. It reads in part "Wanted to encourage you…Don't let em get you down…Kim and I are doing very well. Thought I'd let you know a happy ending as opposed to the many bad ones that I'm sure you see."

- Exhibit 281 is a letter from the mother of a defendant sentenced by Judge McMillan dated 1/29/00. It reads in part "I read your woes in the newspaper and I support you…I know it is a tough position for a good and honest judge

to be put in…You told me to keep in touch if I heard anything else that might keep [my daughter] from continuing her alcoholism…Hope all goes well for you. **We need more Judges like you**. It's a shame you have enemies but it should not affect your judgements from being carried out completely." (*emphasis added)*

- Exhibit 262 is a "Rant" by a **Court Watcher**, published in the "**Rants & Raves**" section of the Bradenton Herald on 5/20/00, four months into his term. It reads "Judge McMillan, our elected judge, has accomplished more in his short time on the bench than I've seen in all my years of courtwatching. He is **setting an example for all judges** to follow…" *(emphasis added)*

- Exhibit 282 is a letter from a **defendant** sentenced by Judge McMillan dated 10/4/99. It reads in part "The actions you took will enable me to enter the United States Air Force…I am looking forward to being a part of the Air Force and being the best person I can be in life. I owe a great deal of gratitude to you.."

- Exhibit 278 is a December 1999 card from Judge McMillan's **trial clerk**, Carol Pressimore, formerly George Brown's trial clerk. It reads in part "Dearest Judge, It has been an absolute pleasure working with you this past year. You have helped so many people**. You have a genuine concern to want to help people and you do**. At times I'm sure you feel like the fight isn't worth it**,** but **you've made many victories along the way**. ..I couldn't give this to you in person or else I would cry…"

CONCLUSION

The Court states that "enormous harm has been inflicted upon our public institutions by loss of confidence among a public little equipped to sort out the valid from the invalid and campaign rhetoric from fact. …The harm [Judge McMillan has inflicted] to the system will linger." (p.25)

The record demonstrates just the opposite.

The judiciary is not immunized from legitimate attacks on its effectiveness. To rule otherwise would be to abolish the First Amendment right to freedom of speech and to deny voters their right to make the informed decision to improve their community through the elective process. The Court has overlooked the case of *In re Kaiser*, 759 P. 2d 392 (Wash. 1988) wherein the Court stated "This Court should be slow to overturn the results of an election and deprive the people of the right to elect our judges. Voters are able and intelligent enough to sort out the puffing and half-truths of election campaigns in making political. Decision.." Although the McMillan campaign did not resort to puffing or half-truths, but made heroic efforts to be accurate, *Kaiser* establishes that the voters are intelligent and should not be underestimated. Likewise, the Court should not lightly underestimate the intelligence of the Manatee County electorate.

This position was affirmed by the citizens and voters Amicus Curiae Briefs filed with this Court.

> *"The right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable restraints on that right…It is the intention of the law to obtain the honest expression of the will or desire of the voter…The real parties in interest here, not in the legal sense, but in realistic terms are the voters. They are possessed of the ultimate interest here and it is they whom we must give primary consideration. Ours is a government of, by and for the people…The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice."*

These are the words of this Honorable Court in the recent presidential election. This Court attempted to sort out the labyrinthine arguments for and against the candidates to determine the will of the voters of this great state; a determination that would propel this Honorable Court to the front pages of newspapers worldwide. The Court did an admirable job, and recognized the gravity of its decision.

In this case, the citizens of Manatee county have come forward to urge this Court to refrain from disturbing their stated will; over 1200 citizens in one brief, as well as those represented by the other amicus briefs. Only the Chief Judge and his small group of friends came forward to oppose my tenure. Should the voters determine me unfit, let them vote me out during the next election. I shall graciously leave the office then, thankful for the opportunity to serve the citizens of this county,

all the while attempting to make the quality of life better for them. The voters have not asked this Court to save them from their mistake…they, too, recognized that the judiciary could be improved, and agreed that I could make such changes.

"We have consistently adhered to the principle that the will of the people is the paramount consideration"

(Florida Supreme Court, 2001)

WHEREFORE, Judge Matthew E. McMillan respectfully requests this Honorable Court to empanel a jury of unbiased citizens from the jury pool of Manatee County and grant Judge McMillan a fair trial in front of that jury, or in the alternative, to allow an independent review of the record in this matter by an unbiased group of citizens who are not political appointees and have no ties to the judiciary or the Florida Bar. Judge McMillan will abide by the decision of such a panel and avail himself of no further judicial remedies or appeals.

Respectfully Submitted,

_____

Matthew E. McMillan, Esquire
Fla. Bar No. 0928630
3311 46th Plaza East

Bradenton, FL 34203
941/751-0475

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Marvin E. Barkin, Esq., 101 E. Kennedy Blvd., Suite 2700, Tampa, FL 33602, via U.S. Mail to John Beranek, Esq., 227 S. Calhoun St., Tallahassee, FL 32301, via U.S. Mail to Thomas C. McDonald, Jr., 100 N. Tampa Street, Suite 2100, Tampa, FL 33602, via U.S. Mail to Lance C. Scriven, Esq., 633 N. Franklin St., Suite 600, Tampa, FL 33602 via U.S. Mail to Brooke Kennerly, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399 and via Hand Delivery to the Florida Supreme Court, Supreme Court Clerk's Office, 500 S. Duval Street, Tallahassee, FL 32399-1927, this ____ day of August, 2001.

_____

Matthew E. McMillan, Esquire
Fla. Bar No. 0928630
3311 46th Plaza East
Bradenton, FL 34203
941/751-0475

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SUPREME COURT OF FLORIDA
TALLAHASSEE, FL
RE: COMPLAINT AGAINST JQC
RE: Chief Judge Thomas Gallen
Judge Peter Dubensky

June 27, 2001

Dear Chief Judge Wells,

I am writing this letter in the hopes that your Court will investigate the Judicial Qualifications Commission for their refusal to investigate and prosecute valid complaints filed against Judges.

In our community, there are several thousand citizens such as myself who have dealings with the Court on a regular bases. I am a pro se litigant and I am speaking for a substantial number of citizens as I say that the public is outraged over the current level of corruption in our Judicial System, and the fact that there are no checks and balances in place to sanction incompetent or unethical judges who refuse to abide by the laws designed protect the public. The Judges in this circuit, with the glaring exception of Judge McMillan, may deliberately thumb their noses at the Court, break the law, and rest easy knowing that their jobs are secure and always will be, because the JQC will not prosecute them for wrong-doing.

This is the end of the road if the Supreme Court fails to act and bring respect and dignity back to the courts. The public's perception is that the Judges feel they at above the law, and they are guaranteed a life-time position such as the one you all enjoy. And without prosecution form the JQC for their wrong-doing, they are.

Attached find a copy of my last complaint filed with the JQC on June 20, 2001 against Judge Peter Dubensky and Chief Judge Thomas Gallen. Also find a copy of a form letter from the JQC in response to my complaint. The JQC refuses to investigate either Judge. I would like a credible explanation as to why not.

But my complaint is not the only one. The public is aware that Judicial Misconduct abounds in the 12th Judicial Circuit, even though our good old boy newspaper doesn't like to mention it. (unless its some trumped up charge against Judge McMillan.) Even so, there have been a few examples that have actually found their way into the paper in the last couple of years regarding other judges. I have attached some of the articles, and I would like an explanation as to why THE JQC HAS FAILED TO PROSECUTE EVEN ONE OF THESE JUDGES!

Here are some examples:

- **Judge Steven Dakan calls up Judge Andy Owens in the middle of the night when his son is arrested on drug charges. Owens agrees to make special provisions to get Dakan's son released from jail immediately, giving Dakan's son special treatment over all other defendants that have to attend Court in the morning and have a bail set, like everybody else.** ***Canon 2A - A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B - A Judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.***
  NO CHARGES FILED

- **Chief Judge Andy Owens calls up candidate Rick DeFuria's attorney friends asking them to exert pressure on him to drop out of a race against an incumbent judge (Judge Parker, who was convicted of DUI) At first, DeFuria refuses to drop out, so Owens fires him from his job.** ***Canon 2B - A Judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.***
  NO CHARGES FILED

- **Judge Steven Dakan refuses to listen to a prosecutor's argument why a violent criminal should not be turned loose. He cuts of the prosecutor twice saying "I know you may find this hard to believe, but I've got other things to do....and "I'm not real in interested in much more of their domestic life...."He lets the defendant out and the defendant rapes and nearly beats to death both his estranged wife and her 13 year old niece at knifepoint in front of her three young children.** ***Canon 3 A 4 and 7, A Judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to the law.***
  NO CHARGES FILED

- **Judge Jannette Dunnigan moved up a court date so that she could preside over a certain defendant before she left the division. He was represented by a certain lawyer who was on the JNC when she was appointed. When she got the case, she violated state sentencing guidelines and let the criminal out of jail for 90 days without stating a reason why. When the Dept. Of Corrections complained, she then reduced his prison sentence form 35 months -- the minimum for DUI with serious bodily in jury - to one year. (The lawyer was Mark Lipinski, who helped run George Brown's campaign against Matt McMillan and also wrote the JQC complaint against McMillan. Hmmmm. Payback for his efforts?)** ***Canon 2 A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B - A Judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.***
  NO CHARGES FILED

- **Judge Thomas Gallen repeatedly made deprecating remarks about Judge McMillan to the press every chance he got, before and after McMillan's trial. He even let himself AND THE PRESS into McMillan's locked office when McMillan was out sick and had his picture taken for one of the articles.** ***Canon 3 A 9 A judge shall not, while a proceeding is pending or pending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.***
  NO CHARGES FILED

- **Judge George Brown during his campaign against McMillan, sent out brochures and flyers with his photograph in front of a sheriff's patrol car, shaking hands with Sheriff Charlie Wells. The flyer was filled with all kinds of pro-police icons and pro-prosecution lingo with no reference to the defendant's rights. (See trial exhibits)** ***Canon 1 A Judge Shall Uphold the Integrity and Independence of the Judiciary. Canon 3 A judge Shall Perform the Duties of the Office Impartially and Diligently.***
  NO CHARGES FILED

- **During Judge McMillan's trial, a police officer testified that Judge George Brown called her up on the phone and bullied her for the way she was handling her investigation of George Brown's son. Then, as payback for not bowing to pressure, he threw out all her cases whenever she appeared in front of him in Court.** ***Canon 3 A 4 and 7, A Judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. Canon 2B - A Judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. Canon 3 A judge Shall Perform the Duties of the Office Impartially and Diligently. Canon 1 A Judge Shall Uphold the Integrity and Independence of the Judiciary. Canon 3 A judge Shall Perform the Duties of the Office Impartially and Diligently.***
  NO CHARGES FILED

- **During McMillan's trial, Judge Gallen's testimony was contradicted by many other witnesses until it became painfully obvious to all courtroom observers that he was simply lying. To add insult to injury, Judge Gallen ordered the County workers (at tax payer expense) to wire the court room with secret microphone and video cameras, and send the wire right up to his office so he could watch and listen to the trial before giving his testimony. This was after the JQC Judge cleared witnesses from the Courtroom before they testified. Gallen got caught and the County worker testified about the scam! But guess what?**
  NO CHARGES FILED

What's wrong with this picture. The JQC refuses to investigate the most outrageous and illegal behavior by these Judges, but if Judge McMillan jaywalks, there's a full-fledged investigation with a recommendation of removal. Why the malfeasance? Why the hypocrisy?

- **Judge Dubensky recuses himself from my case, then changes his mind, then reassigns the case back to himself, then changes his mind again, all without explanation or reason within 45 days. Gallen signs off on the reassignment order even though he knows this is illegal. How could he not know when he orchestrated McMillan's prosecution for reassigning a case to himself. The only difference was McMillan was a brand new judge and neither party in the case objected. In my case, Dubensky and Gallen have been on the bench for decades and I strenuously objected, but Dubensky took the case back anyway. And again,**
  NO CHARGES FILED

- **Instead, the JQC sends a form letter which in part states "these are legal issues and must be addressed through the courts by Motion or by way of Appeal." But Judge Dubensky denied my Motion for Rehearing and my Motion for Clarification. When I informed Judge Dubensky of the law, he told me "I make the rules in here." But of course,**
  NO CHARGES FILED.

The public does not complain about legal issues regarding rulings, it complains about ILLEGAL ones. The JQC knows full well most complainants don't have the time or money for a lengthy, time-consuming, expensive appeal. And they know that most, like mine, will probably get no where.

Why is it when citizens are accused of breaking the law, it's called a felony punishable by imprisonment and we are told by the Judge "ignorance of the law is no excuse." But when judges break the law, it's a "legal issue that must be addressed through the courts by way of motion or appeal" and the JQC sends out a form letter? These judges have been on the bench for many years. They cannot lead us to believe that they are unfamiliar with the rules of Court. They have a whole law library at their disposal plus hoards of lawyers to do their research. This letter is just a cop-out way to dispose of these complaints and protect the Judges from scrutiny or accountability.

Even through there is a system in place to protect the public from incompetent or unethical judges, it is useless because the JQC chooses to ignore their own rules and protect the judges, unless their motives are personal or vindictive, for example, to teach other lawyers not to run against a sitting Judge.

Chief Judge Gallen made an example out of Judge McMillan. For the first time in 30 years, a lawyer had the guts to oppose a sitting Judge in a county where judges have been free to behave incompetently and unfairly for decades. But McMillan wouldn't play ball. Now this is a crime worthy of the death penalty in the Judge's world. McMillan's victory (which was the voters' victory) sent a tremor through the Judges chambers in all of Florida that their once unopposed life-time positions would be in jeopardy if other lawyers should run against them in the future. The JQC was called into action and they performed their mission swiftly and faithfully to the bitter end at the taxpayer's expense. McMillan, who did a superb job and was loved by the citizens and even the lawyers, for his courtroom reform, fairness, and kind judicial demeanor, is found unfit to hold office. How? They just made up the evidence as they went along. They even found him to be beyond rehabilitation, claiming it was because he refused to express regret for his mistakes. Funny, I've enclosed a newspaper article written during his trial titled "McMillan Admits Regrets." Hmmmm.

But the ends justify the means for the JQC. They have now assured the Judges that their jobs are once again secure. This sham prosecution, this absurd Salem witch trial, is costing the taxpayers nearly a half million dollars -- and the feeding frenzy goes on. The message is loud

and clear: "run against a sitting Judge and the JQC will ruin you emotionally, financially, and strip you of your livelihood"

The JQC refuses to prosecute my complaint and how many others worthy of prosecution. And now that I have brought this to your attention, how can I ever get a fair trial from any Judge? Their goal will be to teach ME a lesson and continue to rule against me every time I appear in Court with no fear of reprisal. But I'm not the kind of person to sit down and shut up. I stand up for my Constitutional rights and I stand up for our Consitution.

Do you wonder why the public is losing respect for the Courts. Respect and Dignity will only be returned to our system when the JQC is ordered by the Highest Court in the land to stop its hypocrisy and witch hunts. When it is forced to administer the rules fairly, honestly, and equally. When all Judges rule using the RULES OF COURT and issue orders containing FINDINGS OF FACTS AND CONCLUSIONS OF LAW. When all misdeeds are punished and the same rules are applied equally to all those who come before the Court, including the dreaded pro se litigants such as myself. Then dignity and respect will be returned to the Courts.

Who will oppose this corrupt system and stand up for pro se litigants. Who will stand up to dishonest, hypocritical JQC?

Will YOU?

Please investigate this matter and I will be awaiting your response.

Respectfully Submitted,

Beverly Comstock

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CC: US Attorney, Middle District, Tampa
Representative Mark Flanagan
Senator John McKay
Representative Mike Bennett
Manatee County Commission
St. Petersburg Times, Martin Dykman